

Application No.: 09/388,726

Docket No.: SPINE 3.0-029

REMARKS

This amendment is pursuant to two telephone interviews conducted between Examiner Brian Pellegrino and Applicant's attorney, leading to agreement with respect to claims 19, 20, 25 and 41. The two telephone interviews took place on May 9, 2003 and May 13, 2003, and have been recorded in Interview Summaries of same dates. This amendment formally presents all the agreed-upon changes to the aforementioned claims. No new matter has been added. The Examiner has indicated that pursuant to the agreed-upon changes presented herein, the pending claims would be placed into condition for allowance.

In the telephone interviews, the Examiner had indicated that claims 19 and 20 were rejected under 35 U.S.C. §112 ¶2 for being indefinite. Specifically with respect to claim 19, the Examiner rejected the use of the terms "first", "second", "third" and "fourth" "surface portions", taking the position that this language was too ambiguous. With respect to claim 20, the Examiner rejected the use of the terms "third" and "fourth" "surface portions", positing that it was ambiguous, particularly since there was no recitation of first or second surface portions in the claim.

In response to the above-noted rejections of claims 19 and 20, and per the agreement reached with the Examiner during the May 13, 2003 interview, Applicant amends claim 19 *inter alia* renaming "first surface portions" to "protrusions", "second surface portions" to "recesses", "third surface portions" to "indentations" and "fourth surface portions" to "extensions", thus providing clarity to the claim. For further clarity, Applicant has renamed "first member" to "outer member" and "second member" to "inner member", and has replaced the

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concluding words of the claim "said locking clip is in its unlocked position" with "said indentations are aligned with said protrusions".

In the telephone interviews, the Examiner had also rejected claim 25 under 35 U.S.C. §103(a) over WO 98/46173 to Schar et al. ("Schar") in view of U.S. Patent No. 4,553,273 to Wu ("Wu"). The Examiner took the position that it would have been obvious to combine the two references, and that the combination results in all the features recited in claim 25.

In response to the above-noted rejection of claim 25, and per the agreement reached with the Examiner during the May 13, 2003 interview, Applicant amends claim 25 by adding language further defining the structure of Applicant's locking clip and thereby distinguishing it from the locking clip in Schar identified by element 13. Specifically, Applicant adds the following language: "said locking clip having an inner surface defining an aperture, said aperture including at least two inner surface portions that do not engage said second member when said locking clip is in said second locked position". Neither Schar nor Wu, independently or in combination, teach or suggest having such a locking clip. Consequently, since the combination of Schar and Wu do not teach the elements of presently amended claim 25, and per the agreement reached with the Examiner during the telephone interview of May 13, 2003, claim 25 is now believed to be in condition for allowance.

In the telephone interviews, the Examiner had also rejected claim 41 under 35 U.S.C. §102 over U.S. Patent No. 5,431,658 to Moskovich ("Moskovich"), and separately over U.S. Patent No. 5,429,447 to Wood ("Wood"). The Examiner posited that both Moskovich and Wood, independently, taught all the elements of claim 41.

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In response to the above-noted rejection of claim 41, and per the agreement reached with the Examiner during the May 13, 2003 interview, Applicant amends claim 41 by adding language to distinguish over Moskovich and Wood.

Moskovich teaches a device for facilitating the insertion of bone grafts between two spinal vertebrae. With regard to this reference, Applicant adds the term "controllably" to describe the motion of the first and second members with respect to each other while the locking clip is in the unlocked position. In Moskovich, when the locking clip is in the unlocked position, the Moskovich invention is in two parts having no interconnectivity or controlled motion therebetween. Applicant's invention, on the other hand, still maintains controlled movement in the axial direction between the first and second members when the locking clip is in the unlocked position. Therefore, in view of the present amendment to claim 41, Moskovich does not teach or suggest this particular limitation.

Wood teaches a turnbuckle assembly for a vehicle steering linkage. With regard to Wood, Applicant adds the phrase "engageable to spinal vertebrae" to claim 41 to distinguish over the automobile steering column linkage elements taught in Wood.

Consequently, in view of the above-described amendments to claim 41, since neither Moskovich nor Wood teach or suggest all the limitations of presently amended claim 41, and as per the agreement reached with the Examiner during the telephone interview of May 13, 2003, claim 41 is now believed to be in condition for allowance.

As it is believed that all of the rejections raised in the interviews conducted on May 9, 2003 and May 13, 2003 have

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been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 14, 2003

Respectfully submitted,

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